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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

b7

[REDACTED]

DATE: DEC 15 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a [REDACTED] corporation established in October 2001, states that it operates a business engaged in the structural moving/transposition of buildings. The petitioner claims to be an affiliate of [REDACTED] located in Canada. The petitioner seeks to employ the beneficiary from November 2009 to November 2012 to serve in the position of Regional Assistant General Manager.

The director denied the petition on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary has been primarily performing the duties of a manager or executive with the foreign company; and (2) that the beneficiary will be performing duties in the proposed position that are primarily managerial or executive.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision "ignores and misevaluates substantial evidence presented." Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. The Issues on Appeal

A. Employment Abroad in Managerial Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary has been primarily performing the duties of a manager or executive with the foreign company.

Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 27, 2009. The petitioner indicated on the Form I-129 that it operates a business engaged in the structural moving/transposition of buildings with 18 current employees and a gross annual income of \$1.9M. In support

of the petition, the petitioner submitted a letter describing the foreign position held by the beneficiary as follows:

[The beneficiary] is currently the Assistant General Manager for [the foreign company] at the [redacted] branch of operations in Canada. [redacted] has employed [the beneficiary] on a continuous full time basis in Canada since July of 1991. [The beneficiary] manages four supervisors and other intermediate managers, who in turn manage two crew supervisors, subordinate drivers and laborers, sales staff, and office staff.

As the Assistant General Manager of [the foreign company], [the beneficiary] maintains the authority and duties of a qualifying manager. Specifically, [the beneficiary] has the authority to establish company policies and direction with respect to day to day operations, answering directly to the owners of the organization. He negotiates significant contract for moving structures and makes major decisions necessary to keep the Canadian business in operation. Additionally, he is responsible for hiring and firing key personnel, subject only to the oversight of ownership. [The beneficiary] ensures that subordinate foremen and their crews will conduct their business safely and up to code. He receives only general supervision from the President and Board of Directors for the company. In sum, [the beneficiary] has the authority and latitude to exercise broad discretion in executing his managerial duties.

The petitioner also provided an organizational chart for the entire enterprise, including the foreign and U.S. companies. The organizational chart illustrates that the foreign company employs 17 individuals, including the beneficiary, in four divisions. The beneficiary is listed as the assistant general manager supervising an office manager with three subordinates, a sales manager with one subordinate, an estimator/operations manager with one supervisor and three subordinates, and an industrial operations manager with one supervisor and two subordinates. The beneficiary reports directly to the general manager who is also the president of the enterprise.

The director issued a request for additional evidence ("RFE") on October 30, 2009, instructing the petitioner to submit, *inter alia*, additional documentation on the beneficiary's duties abroad and subordinate employees.

In response to the RFE, the petitioner provided a percentage breakdown of the beneficiary's duties abroad, noting, in part, that he "establishes company policy and direction," "negotiates significant contracts . . . and makes major decisions necessary to keep the Canadian business in operation," and has the "authority and latitude to exercise broad discretion in executing his managerial duties."

The petitioner further provided examples of goals and policies established by the beneficiary, examples of discretionary decisions made by the beneficiary in the previous six months, and additional day-to-day activities performed by the beneficiary in the previous six months. The petitioner also provided the same organizational chart submitted with the initial petition.

The director denied the petition on December 3, 2009, concluding that the petitioner failed to establish that the beneficiary has been primarily performing the duties of a manager or executive with the foreign company. In denying the petition, the director found that the petitioner provided a vague and nonspecific description of the beneficiary's duties at the foreign company that failed to demonstrate what the beneficiary does on a day-to-day basis. The director further found that the petitioner did not define the goals, policies, or strategies established by the beneficiary. The director concluded that it is unclear whether the beneficiary's position abroad is primarily managerial or executive.

On appeal, counsel submits a brief that refers to the same duties previously provided by the petitioner. Counsel contends that the director overlooked pages of evidence submitted as to the specifics of the beneficiary's current duties.

The decision does not address such particulars as . . . (4) twenty-four bullet points of specific managerial responsibilities performed by the beneficiary for the past six months; (5) the Beneficiary's 18 years of experience with the Canadian affiliate; (6) the detailed hierarchy charts for the organization and the Beneficiary's place on these charts; . . .

Discussion

Upon review, counsel's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary has been primarily performing the duties of a manager or executive with the foreign company.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(I)(3)(ii). Contrary to the director's observations, the petitioner has provided a comprehensive description of the beneficiary's duties with the foreign company sufficient to establish that his duties are primarily related to the management of the petitioner's business, and not to producing a product, providing a service, or performing other non-managerial functions. The evidence submitted also establishes that the beneficiary supervises and controls the work of subordinate managerial or professional employees and exercises authority to hire and fire employees under his supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

While the beneficiary will undoubtedly be required to apply his expertise to perform some higher-level contract negotiations, the AAO is persuaded that the beneficiary's subordinates at the foreign company carry out the majority of the day-to-day non-managerial tasks required to operate the business. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial or executive duties for the foreign company. The petitioner has met that burden.

B. Managerial or Executive Duties

The second issue addressed by the director is whether the petitioner established that the beneficiary will be performing duties in the proposed position that are primarily managerial or executive.

Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 27, 2009. In support of the petition, the petitioner submitted a letter describing the beneficiary's proposed duties as follows:

We would like [the beneficiary] to serve as the Regional Assistant General Manager for our [REDACTED] operations as well as our Canadian operations, so that he may be able to fully manage our day-to-day operations on both sides of the border. With L-1A approval, [the beneficiary] would continue to work primarily in and out of Canada, but would enter the United States and exercise managerial authority in the United States as operations dictate. Our continuing expansion into the United States has created this need for [the beneficiary's] presence.

If granted L-1A status, [the beneficiary] will exercise wide discretion in setting the long and short-term direction of the U.S. Company, subject strictly to the ownership's review. [The

beneficiary] will hire and fire personnel, supervise managerial staff, consult with professionals, negotiate contracts, and generally oversee day-to-day operations. His tasks will include hiring and overseeing the work of subordinates and staff, bidding for contracts, and implementing the company's business plan.

[The petitioner] currently has a workforce of approximately eighteen employees, which includes a Regional General Manager, an Office Manager, a Sales Manager, an Operations Manager, two Estimators, a sales staff, two crew foremen, a crew of four operators and laborers, eight prep crew, and three office staff. Additional laborers will be hired as projects dictate. All staff, excluding the Regional General Manager, but subordinate supervisors, will answer to [the beneficiary].

The petitioner also provided an organizational chart for the entire enterprise, including the foreign and U.S. companies. The organizational chart illustrates that the U.S. company employs 25 individuals, including the beneficiary, in four divisions. The beneficiary is listed as the assistant general manager supervising an office manager with three subordinates, a sales manager with one subordinate, an operations manager with two crew foremen and twelve subordinates, and an estimator with one subordinate. The beneficiary will report directly to the general manager who is also the president of the enterprise.

The director issued a request for additional evidence ("RFE") on October 30, 2009, instructing the petitioner to submit, *inter alia*, additional documentation on the beneficiary's duties for the U.S. company and subordinate employees.

In response to the RFE, the petitioner indicated that the beneficiary will spend 65% of his time in Canada with the Canadian company (in his current position abroad) and 35% of his time at the U.S. company. The petitioner further provided a percentage breakdown of the beneficiary's duties for his time in Canada and in the United States, noting, in part, that his duties for the U.S. company will include "establish[ing] company policy and implement[ing a] business plan," "hir[ing] and fir[ing] personnel and general staffing issues," "general management of supervisors, crews, office staff, and contracted personnel," and "set[ting] long and short term direction of [the] company, in conjunction with [the] owners."

The petitioner submitted a list of its U.S. employees along with payroll records, a quarterly wage detail report for the third quarter of 2009, and 2008 IRS Forms W-2.

The director denied the petition on December 3, 2009, concluding that the petitioner failed to establish that the beneficiary will be performing duties in the proposed position that are primarily managerial or executive. In denying the petition, the director found that the petitioner provided a vague and nonspecific description of the beneficiary's proposed duties at the U.S. company that failed to demonstrate what the beneficiary will do on a day-to-day basis. The director further found that having the beneficiary come to the United States to render his services to the foreign entity is contrary to the regulation. The director concluded that the record demonstrates that the position in the United States is not primarily managerial or executive in capacity.

On appeal, counsel submits a brief that refers to the same proposed duties previously provided by the petitioner. Counsel contends that the director overlooked pages of evidence submitted as to the specifics of the beneficiary's current duties.

The decision does not address such particulars as (1) submission of financial statements detailing the size of operations to be managed (\$2.1 million dollars in annual revenues for the U.S. company, \$1.4 million in assets for the U.S. company, and substantially more for the

Group); (2) payroll records submitted in triplicate (18 U.S. employees and growing); (3) salary of the beneficiary (\$78,000 plus benefits); . . . (6) the detailed hierarchy charts for the organization and the Beneficiary's place on these charts; and (7) the fact that the Beneficiary was being asked to fill a former L-1A manager position, held by a retiring owner of the company.

Discussion

Upon review, counsel's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be performing duties in the proposed position that are primarily managerial or executive. Contrary to the director's observations, the petitioner has provided a description of the beneficiary's proposed duties at the U.S. company sufficient to establish that his duties will be primarily related to the management of the petitioner's business, and not to produce a product, provide a service, or perform other non-managerial functions. The evidence submitted establishes that the beneficiary will supervise and control the work of subordinate managerial or professional employees and exercises authority to hire and fire employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

Furthermore, the AAO notes that the beneficiary may spend the majority of his time working at the foreign company and coming to the United States intermittently to perform managerial or executive duties at the U.S. company. *See* 8 C.F.R. § 214.2(l)(12)(ii). The director improperly determined that the beneficiary is coming to the United States to render his services to the foreign company and as such does not comply with 8 C.F.R. § 214.2(l)(1)(ii)(A); however, the petitioner clearly demonstrated that the beneficiary will come to the United States to render his services to the U.S. company and only perform duties related to the foreign company while he is abroad.

While the beneficiary will undoubtedly be required to apply his expertise to perform some higher-level contract negotiations and other tasks, the AAO is persuaded that the beneficiary's subordinates in the United States will carry out the majority of the day-to-day non-managerial tasks required to operate the business. The petitioner need only establish that the beneficiary will devote more than half of his time at the U.S. company to managerial or executive duties. The petitioner has met that burden.

III. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden. Accordingly, the director's decision dated December 3, 2009 is withdrawn and the petition is approved.

ORDER: The appeal is sustained.